IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 669 OF 2003

IN

SUMMARY SUIT NO. 1102 OF 2003

M/s.Mukesh Textiles .. Plaintiff

versus

Himatlal Harjivan & Co. & ors. .. Defendants

...

Mr.Rajesh Patel i/b Dave & Co. for the plaintiff.

Mr.Piyush Sanghvi defendant no.3 present in person.

CORAM : D.G. KARNIK,J.

DATED : 25th April 2005.

P.C.:

1. Heard the learned counsel for the plaintiff and defendant no.3 in person. None present for defendant nos.1 and 2.

2. The learned counsel for the plaintiff hands in affidavit of service of Summons for Judgement. Affidavit is taken on record and marked Exhibit-A. The learned counsel for the plaintiff also hands in

original documents along with a list. The documents are taken on record and collectively marked Exhibit-B. Despite service of Summons for Judgement, the defendants have not filed an application for leave to defend nor filed any affidavit in reply. In the circumstances, averments made in the plaint are deemed to be accepted.

3. I have perused the plaint and the documents filed on record. The defendant no.1 is a partnership firm and defendant nos.2 and 3 are its partners. At the request of the defendant, plaintiff advanced to the defendants loans of Rs.1,35,000/-, Rs.10,000/- and Rs.20,000/- on 4th August 1999, 1st February 2000 and 27th July 2000 respectively. By a notice dated 18th February 2002, the plaintiff demanded the payment. However, the defendants failed and neglected to do so. After giving a credit for the money received, plaintiff has filed his suit for recovery of the balance. In the absence of any application for leave to defend, the plaintiff is entitled to a decree under Order 37 Rule 3(6) of the Code of Civil Procedure. Hence, Summons for Judgement is made absolute and suit of the plaintiff is decreed in terms of prayer clause of the plaint.

D.G. KARNIK,J